But the Moratorium Proclamation obstacle still remains to be got over. By section 2 thereof, "debt" is defined as including "any form of claim or obligation for the payment of money". Therefore the claim in Japanese Civil Suit No. 10 of 2602 falls within that definition and, not being a debt incurred after the date when the Moratorium Proclamation came into force — see section 6 (a) thereof — this debt is subject to the provisions of that Proclamation.

Section 5 (3) of that Proclamation reads as follows :—

> No rights, remedies or powers in respect of any such debt or bill of exchange shall, at any time, be exercised or enforced in any manner by process of law or otherwise solely by reason of non-payment as a result of the provisions of the Proclamation, but nothing shall prevent the voluntary payment of any debt.

In my view, the applicant, in applying under section 4 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, to carry on the proceedings instituted in the Japanese Court to recover the debt alleged to be due to him, is exercising a right in respect of that debt. Undoubtedly he is exercising a statutory right afforded to him by that section, and the question is whether it can be successfully argued that the provisions of the Japanese Judgments and Civil Proceedings Ordinance, 1946, which is later in time than the Moratorium Proclmation, over-ride the provisions of that Proclamation. Such an argument could be supported on the ground that section 4 of that Ordinance imposes a time limit during which applications to carry on proceedings may be made and that such time limit (ignoring the power of the Court to extend the time in which such applications may be made) has already expired.

I might have been inclined to answer that question in the affirmative if, having given an order to carry on these proceedings under section 4 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, I had power under that section to stay these proceedings until the Moratorium Proclamation is repealed. But, sub-section (2) of that section reads as follows :—

> Upon the hearing of the application the appropriate Court may order such proceedings to be carried on as though they had been instituted before the appropriate Court and may order such amendments and give such consequential or other directions in the matter as may seem just.

In my view the consequential directions which may be given under that sub-section must be of such a nature that they will advance the carrying on of the proceedings, not retard them. Hence, under that sub-section I cannot impose a stay order.

Power to impose a stay order is contained in sub-section (2) of section 3 of the Courts (Restriction of Civil Jurisdiction) Ordinance, 1946, but, as I read that sub-section, that power can only be used *after* a suit has been properly instituted — by that I mean a suit which does not offend against any of the provisions of sub-section (1) of section 3 of that Ordinance — and it subsequently turns out at a later stage in the suit that one or more questions or issues arising therein offend against any of the provisions of that sub-section, and therefore prevent the Court from hearing and determining those questions or issues.

Accordingly this application must be dismissed. There is no need to make any order as to costs since this is an ex-parte application.

This decision may cause some embarrassment to persons, who, in view of the time limit imposed by section 4 of the Japanese Judgments and Civil Proceedings Ordinance, 1946, are faced with the problem of waiting until the Moratorium Proclamation is repealed before they can apply to carry on proceedings instituted in respect of debts in a Japanese Court. In order that this difficulty may be brought directly to the notice of Government I direct that a copy of this judgment should be sent immediately to the Attorney General.

Application Dismissed.

YEE NGOK v. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan, C.J.) July 14, 1947]

Minor Offences Enactment Section 35 (i) — Accused originally charged under Section 411 of the Penal Code for dishonestly retaining stolen property — Charge amended to one under Section 35 (i) of the Minor Offences Enactment at end of prosecution case — Accused not found in possession of property.

In this case the accused was originally charged under Section 411 of the Penal Code for dishonestly retaining stolen property, to wit, a new gearbox belonging to the P.W.D. At the end of the prosecution case the District Judge held that there was not sufficient evidence that the property in question was stolen property and amended the charge to one under Section 35 (i) of the Minor Offences Enactment. The accused was convicted on this charge and sentenced to 3 months r.i. He appealed against sentence. The accused was not found in actual possession of the property, which was found in the possession of a Malay, who gave evidence at the trial, saying that he had been asked by the accused to sell the property. This witness also said that he had previously seen the property in the accused's truck and that he had taken it to accused's house at the request of the accused.

Held, (1) that as the accused was not found in actual possession of the property the conviction under Section 35 (i) of the Minor Offences Enactment, cannot stand, (2) further following **Regina v. Kwek Chang Seng**[2] that possession under Section 35 (i) of the Minor Offences Enactment only applies to possession in the streets or in a public place and not to possession in a house, (3) that on the facts there was evidence which, if believed,

established a prima facie case that the gear box was stolen property and that it was retained by the appellant and that therefore a new trial must be ordered.

Cases referred to :—

(1) *Chong Kon Lip v. Public Prosecutor* (1946), M.L.J. 165.

(2) *Regina v. Kwek Chang Seng*, 6, S.S.L.R. 35.

CRIMINAL APPEAL FROM DISTRICT JUDGE.

P. B. Nair for the Appellant.

A. J. Grattan-Bellew for the Respondent.

Willan, C. J. : —This is an appeal against the decision of the District Judge, Selangor, in convicting the appellant of an offence against section 35 (i) of the Minor Offences Enactment (Cap. 46). The appellant was sentenced to imprisonment for three months, which is the maximum sentence of imprisonment under that section, and this appeal is against sentence only.

At the trial the appellant was originally charged under section 411 of the Penal Code, as follows :—

"That you between 24.3.47 and 27.3.47 dishonestly retained stolen property to wit a new gear-box belonging to the P.W.D. knowing or having reason to believe the same to be stolen property and that you thereby committed an offence punishable under section 411 of the Penal Code (Cap. 45)".

The appellant claimed trial on that charge. At the end of the case for the prosecution the District Judge held that there was not sufficient evidence that the property in question was stolen property and amended the charge to one under section 35 (i) of the Minor Offences Enactment (Cap. 46) as follows :—

"That you between 24th March and 27th March, 1947, at Jalan Kenanga, did have in your possession a new gear-box and packing case which may be reasonably suspected of being stolen property or fraudulently obtained and that you thereby committed an offence under and punishable under section 35 (i) Cap. 46".

To this charge the appellant pleaded guilty and was convicted and sentenced as stated.

The facts are that the appellant is a haulage contractor for a certain firm in Kuala Lumpur and that on the 23rd day of March 1947 he proceeded to the railway goods-shed, Brickfields Road, Kuala Lumpur, to collect eight boxes for this firm. A Malay, Prosecution Witness No. 1, engaged by the appellant, went with him and his evidence is that both he and the appellant made two trips to collect these eight boxes for that firm. That on the first trip three boxes were safely delivered to that firm, and on the second trip, the remaining five boxes were also safely delivered. But, in addition, this witness stated that after the delivery of the five boxes on the second trip he saw a small box remaining on the appellant's truck and that the appellant drove the truck, with this box in it, to his own house at Jalan Kenanga. This witness was unable to account for the presence of this extra small box on the truck and stated that he also went with the appellant on this journey to his, the appellant's, house, and that there he put this small box into that house at the request of the appellant.

According to this prosecution witness the appellant, on the next day i.e. the 24th day of March, 1947, asked him to sell the small box and contents thereof on his, the appellant's, behalf. This witness found the box in a broken condition, so he took the contents therefrom, wrapped them up in a gunny bag, and proceeded in a taxi with them. He was arrested by a detective whilst on the way and the contents of the small box were taken possession of by the police.

At the trial the police witnesses put in evidence two exhibits — pieces of wood, Exhibit P1 found in the house of the appellant, and Exhibit P2 the contents of the gunny bag, a gear-box, found in the possession of the Malay prosecution witness.

A Superintendent of Stores, Public Works Department, gave evidence that the markings on the box Exhibit P1 are the same as those on a consignment now being supplied by the Crown Agents to the Malayan Union Government, but no indents in respect of this consignment have yet arrived. He also stated that this Exhibit P1 had the Crown Agents mark on it. He further stated the gear-box Exhibit P2 was Government property and that Government was the sole importer thereof.

In my view the evidence of this Superintendent of Stores and also of the Malay prosecution witness, if believed, establishes a prima facie case that this gear-box was stolen property and that it was retained by the appellant.

Now, as to the conviction of the appellant under section 35 (i) of the Minor Offences Enactment (Cap. 46), I am of the opinion that it cannot stand because he was not found in actual possession of it. I agree with the view expressed by Spenser Wilkinson J. in *Chong Kon Lip v. Public Prosecutor*[1] where the learned Judge said :—

> The accused was not found in possession of these tyres, having sold them some ten days before he was questioned, and the question therefore arises whether the words 'has in his possession' (here the learned Judge is referring to section 35 (i) of the Minor Offences Enactment) can cover a case of this kind where the accused does not have the goods in his possession at the time he is called on by the Police

for an explanation. I think the words 'who has in his possession or conveys' must be read with the words 'shall, if he fails to account satisfactorily how he came by the same' and that therefore the having in possession and the failing to account must be contemporaneous. I reach this conclusion not only from reading the section as a whole but also from those cases in which this section has been discussed in the Courts.

Further, another objection to a conviction under section 35 (i) of the Minor Offences Enactment is the case of *Regina v. Kwek Chang Seng*[2], which is a Court of Appeal decision, in which it was held that possession under section 35 (i) of the Indian Act XIII of 1856, which is similar to section 35 (i) of our Minor Offences Enactment, only applies to possession in the streets or in a public place and not to possession in a house.

Accordingly I quash the conviction and sentence under section 35 (i) of the Minor Offences Enactment (Cap. 46).

Under section 316 (b) of the Criminal Procedure Code I would have altered the finding to one of a conviction under section 411 of the Penal Code were it not for the fact that the appellant has had no chance to make his defence to such a charge. In view of that fact I order a new trial before another District Judge, the charge to be under section 411 of the Penal Code. No doubt that District Judge will give due weight to what I have said as regards the evidence that this gear-box Exhibit P2 was proved to be stolen property. He should of course bear in mind that he will see and hear the witnesses at the new trial and he must make up his own mind as to their credibility.

Pending the new trial the appellant is granted bail in the sum of five hundred dollars, with one surety.

Order Accordingly.

SULONG bin NAIN vs. PUBLIC PROSECUTOR.

[App. Crim. Juris. (Willan C.J., Malayan Union, Murray Aynsley C.J. Singapore, & Bostock Hill, J.)July 25, 1947]

Public Order and Safety Proclamation, Section 3 (1) — Offence of carrying Arms — Whether person carrying Arms with a view to handing them to the Police is guilty of the Offence — Absolute Prohibition — Opinions of Assessors regarding Sentence — Criminal Procedure Code, F. M. S. Section 199.

This was an appeal against the conviction of the appellant for the offence of carrying arms, to wit two hand grenades, contrary to Section 3 (1) of the Public Order and Safety Proclamation. The facts were that the appellant when arrested, was carrying a bag, and in the bag, underneath a sarong; there were two hand grenades not fitted with fuses, and also two fuses which would fit exactly the two hand grenades. A police armourer gave evidence to the effect that the two hand grenades were in a clean condition, that the two fuses were complete with detonators and were in a serviceable condition. The appellant gave evidence at the trial and stated that when he was arrested he was carrying these two hand grenades with the intention of handing them over to the Police. After summing up the learned trial Judge left two questions for the opinion of the assessors:—(1) Was the appellant guilty of carrying arms? (2) With what intention was he carrying them? Both the assessors found the appellant guilty of carrying arms but stated that in their opinion he was carrying arms with a view to handing them to the Police. The learned trial Judge disagreed with that opinion and convicted the accused. Having convicted and sentenced the appellant he reserved certain questions for the Court of Appeal. The following questions were eventually argued before the Court of Appeal:—

(a) Whether the learned trial Judge was right in leaving the question of intention to the assessors; (b) Having done so, was he bound by their views in assessing sentence; (c) Whether a person carrying arms with a view to handing them to the Police is guilty of an offence against Section 3 (1) of the Public Order and Safety Proclamation; (d) Whether the evidence before the Court established the articles carried by the appellant were hand grenades.

Held, (1) that Section 3 (1) of the Public Order and Safety Proclamation prohibits absolutely the carrying of arms and that it is not necessary to prove any ulterior intention to establish that offence; (2) that therefore a person carrying arms with a view to handing them to the Police is guilty of an offence against Section 3 (1) of the Public Order and Safety Proclamation; (3) that the learned trial Judge was wrong in leaving the question of intention to the assessors; (4) that a Judge trying a case with the aid of assessors is not bound by any opinions that may be expressed by the assessors regarding the sentence as Section 199 of the Criminal Procedure Code makes it clear that the question of punishment is for one for the Judge alone; (5) that there was no doubt that what the appellant was carrying was two grenade parts and two fuses which make up two complete hand grenades and so on the facts the accused was rightly convicted of carrying the two hand grenades.

CRIMINAL APPEAL.

E. D. Shearn for the Appellant.

C. H. Whitton for the Respondent.

The judgment of the Court was given by :—

Willan, C. J. : — This is an appeal against the conviction of the appellant for the offence of carrying arms — to wit two hand grenades — contrary to sub-section (1) of section 3 of the Public Order and Safety Proclamation No. 50.

Since one of the prescribed punishments for that offence is death, the appellant was tried with the aid of Assessors in accordance with sub-section (1) of section 184 of the Criminal Procedure Code. He was convicted and sentenced to a term of imprisonment.

The facts are not disputed, and it was established at the trial that the appellant, when arrested, was carrying a bag, and in the bag, underneath a sarong, there were two hand grenades not fitted with fuses, and also two fuses which would fit exactly the two